

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ERIC LASHAWN GOLEY,

Defendant-Appellant.

UNPUBLISHED

June 21, 2007

No. 269101

Wayne Circuit Court

LC No. 05-010162-01

Before: Servitto, P.J., and Jansen and Schuette, JJ.

PER CURIAM.

Defendant was convicted by a jury of second-degree murder, MCL 750.317; assault with intent to do great bodily harm less than murder, MCL 750.84; and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. He was sentenced to concurrent prison terms of 27 to 52 years for the murder conviction, and four to ten years for the assault conviction, to be served consecutive to a two-year term of imprisonment for the felony-firearm conviction. Defendant now appeals as of right. We affirm.

I. FACTS

Defendant's convictions arise from the shooting death of Richard Mathis and the assault of Mathis's brother, Rushawn Davis. The shooting occurred during an ongoing confrontation in which Davis repeatedly hit Defendant with a stick. After briefly fleeing from the scene, Defendant returned and fired multiple shots with an AK-47 assault rifle. During the gunfire, Mathis was struck and killed.

II. SUFFICIENCY OF THE EVIDENCE

Defendant argues that there was insufficient evidence to support his second-degree murder conviction and, instead, the evidence showed that he either acted in self-defense or that there was sufficient provocation to mitigate the crime to voluntary manslaughter. Defendant raises this same issue in a supplemental pro se brief in which he additionally argues that the jury could not properly base its decision on the testimony of Rushawn Davis, the assault victim, because it lacked credibility. We disagree with defendant's arguments.

A. Standard of Review

The sufficiency of the evidence is to be evaluated by reviewing it in the light most favorable to the prosecution to determine whether a rational trier of fact could find every element of the crime proven beyond a reasonable doubt. *People v Petrella*, 424 Mich 221, 268-270; 380 NW2d 11 (1985). The trier of fact may also draw reasonable inferences from the evidence. *People v Reddick*, 187 Mich App 547, 551; 468 NW2d 278 (1991). Additionally, the resolution of credibility disputes is within the exclusive province of the trier of fact. *People v Vaughn*, 186 Mich App 376, 380; 465 NW2d 365 (1990).

B. Analysis

To convict a defendant of second-degree murder, the prosecution must prove beyond a reasonable doubt that there was a death, caused by an act of the defendant, who acted with malice, and without justification, excuse, or mitigation. *People v Goecke*, 457 Mich 442, 463-464; 579 NW2d 868 (1998); *People v Bailey*, 451 Mich 657, 669; 549 NW2d 325, amended by 453 Mich 1204 (1996). “Malice is defined as the intent to kill, the intent to cause great bodily harm, or the intent to do an act in wanton and wilful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm.” *Goecke, supra* at 464; see also *People v Aaron*, 409 Mich 672, 728; 299 NW2d 304 (1980). Additionally, malice “may be inferred from the facts and circumstances” of the crime. *People v Spearman*, 195 Mich App 434, 438; 491 NW2d 606 (1992), overruled on other grounds by *People v Veling*, 443 Mich 23, 42-43 (1993). Malice may also be inferred from the use of a deadly weapon. *People v Turner*, 213 Mich App 558, 567; 540 NW2d 728 (1995), overruled on other grounds by *People v Mass*, 464 Mich 615, 628 (2001).

Voluntary manslaughter is the voluntary killing of another human being without malice. See *People v Mendoza*, 468 Mich 527, 534-535; 664 NW2d 685 (2003). “Voluntary manslaughter is an intentional killing committed under the influence of passion or hot blood produced by adequate provocation and before a reasonable time has passed for the blood to cool.” *People v Hess*, 214 Mich App 33, 38; 543 NW2d 332 (1995); see also *Mendoza, supra* at 535.

The killing of another in self-defense is justifiable homicide. *People v Riddle*, 467 Mich 116, 119; 649 NW2d 30 (2002). The use of deadly force in self-defense is justified “if the defendant honestly and reasonably believes that his life is in imminent danger or that there is a threat of serious bodily harm.” *People v Heflin*, 434 Mich 482, 502; 456 NW2d 10 (1990). “Once evidence of self-defense is introduced, the prosecutor bears the burden of disproving it beyond a reasonable doubt.” *People v Fortson*, 202 Mich App 13, 20; 507 NW2d 763 (1993).

In the present case, the testimony indicated that Davis and defendant became embroiled in an argument, during which Davis hit defendant with a stick. Defendant then left the scene, withdrawing from the confrontation and any imminent danger. He later returned, however, armed with a high-powered, semi-automatic assault rifle, loaded with up to 75 rounds of ammunition. According to Davis, defendant shot Mathis three or four times, and then fired at Mathis seven or eight more times as Mathis was lying on the ground. The number of spent casings found at the scene indicates that defendant fired the gun at least 17 times. Defendant then fled and hid the weapon before disappearing for three months.

Viewed in a light most favorable to the prosecution, the evidence was sufficient to enable a reasonable jury to find beyond a reasonable doubt that defendant returned to the scene armed with an assault rifle and fired at Davis and Mathis. This evidence was sufficient to support a finding of malice, i.e., that defendant acted with an intent to kill, an intent to cause great bodily harm, or an intent to commit an act with willful and wanton disregard of the likelihood that the natural tendency of his actions would cause death or great bodily harm. See *Goecke, supra* at 464; *Aaron, supra* at 728.

We agree that defendant's statement to the police explaining the shooting created a question of fact for the jury concerning provocation.¹ However, it was the jury's prerogative to believe Davis's testimony rather than defendant's statement to the police. The resolution of credibility disputes is within the exclusive province of the trier of fact. *Vaughn, supra* at 380. This Court will not second-guess the jury's determination that there was inadequate provocation to negate a finding of malice.

Concerning defendant's claim of self-defense, Davis testified that defendant (upon returning to the scene) simply opened fire. However, defendant told the police that he began shooting only after Mathis tried to take the weapon from him and that he believed Mathis was going to shoot him. Thus, there was a question of fact concerning the circumstances under which the shooting took place and whether defendant had an honest and reasonable belief that his life was in imminent danger when he decided to shoot. Moreover, even under defendant's version of the events, he was the aggressor. Defendant claimed that he withdrew from the initial confrontation, left, and then returned with a deadly weapon. At that point, he became the aggressor, negating any finding of self-defense. *Riddle, supra* at 119-120, 133. Even imperfect self-defense, which can mitigate second-degree murder to manslaughter, was unavailable if defendant began the quarrel with malice. *People v Kemp*, 202 Mich App 318, 324; 508 NW2d 184 (1993); see also *People v Butler*, 193 Mich App 63, 67; 483 NW2d 430 (1992). Thus, viewed in a light most favorable to the prosecution, there was sufficient evidence to disprove defendant's claim of self-defense beyond a reasonable doubt.

Affirmed.

/s/ Deborah A. Servitto
/s/ Kathleen Jansen
/s/ Bill Schuette

¹ The jury was instructed on the lesser offense of voluntary manslaughter.